

EXHIBIT 17

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
Plaintiffs :
v. : No. 1:23-cv-00108
GOOGLE, LLC, :
Defendants. :

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Monday, August 21, 2023

Video Deposition of CHRISTOPHER KOEPKE,
taken at the Law Offices of Paul, Weiss,
Rifkind, Wharton & Garrison LLP, 2001 K St NW,
Washington, DC, beginning at 9:35 a.m. Eastern
Standard Time, before Ryan K. Black, Registered
Professional Reporter, Certified Livenote
Reporter and Notary Public in and for the
District of Columbia

Job No. CS6043164

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1 APPEARANCES:		1 THE VIDEOGRAPHER: Good morning. We are
2 UNITED STATES DEPARTMENT OF JUSTICE		2 going on the record at 9:35 a.m. on August 21st,
3 ANTITRUST DIVISION		3 2023. Please note that the microphones are
4 BY: KATHERINE CLEMONS, ESQ.		4 sensitive and may pick up whispering and private
5 VICTOR LIU, ESQ.		5 conversations. Please mute your phones at this
6 ALVIN CHU, ESQ.		6 time. Audio and video recording will continue to
7 MARK SOSNOWSKY, ESQ. - Via Zoom		7 take place unless all parties agree to go off the
8 450 5th Street, N.W.		8 record.
9 Washington, DC 20530		9 This is Media Unit 1 of the
10 202.514.2414		10 video-recorded deposition of Mr. Christopher
11 katherine.clemons@usdoj.gov		11 Koepke in the matter of United States, et al.,
12 victor.liu@usdoj.gov		12 versus Google, LLC, filed in the United States
13 alvin.chu@usdoj.gov		13 District Court Eastern District of Virginia
14 mark.sosnowsky@usdoj.gov		14 Alexandria Division, Case Number
15 Representing - The United States of America		15 1:23-cv-00108-LMB-JFA.
16 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP,		16 My name is Orson Braithwaite,
17 BY: MARTHA L. GOODMAN, ESQ.		17 representing Veritext Legal Solutions, and I'm
18 HEATHER C. MILLIGAN, ESQ.		18 the videographer. The court reporter is Ryan
19 2001 K St NW,		19 Black, from the firm Veritext Legal Solutions.
20 Washington, DC		20 Counsel will now state their appearances
21 202.223.7341		21 and affiliations for the record.
22 mgoodman@paulweiss.com		22 MS. GOODMAN: Martha Goodman, from Paul
23 hmilligan@paulweiss.com		23 Weiss, on behalf of Google LLC.
24 Representing - Google LLC		24 MS. MILLIGAN: Heather Milligan, also on
25		25 behalf of Paul Weiss, for Google.
26 ALSO PRESENT:		
27 Orson Braithwaite - Legal Videographer		
28 Kenneth Whitley - Department of Health and Human		
29 Services		
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1 I N D E X		1 MS. CLEMONS: Katherine Clemons, with
2 TESTIMONY OF: CHRISTOPHER KOEKPKE	PAGE	2 the Department of Justice, on behalf of the
3 By Ms. Goodman.....6		3 United States of America, CMS and the witness.
4 E X H I B I T S		4 MR. LIU: Victor Liu, also with the
5 EXHIBIT DESCRIPTION PAGE		5 Department of Justice, on behalf of the United
6 Exhibit 65 a document Bates Numbered		6 States and CMS.
7 CMS-ADS-11906 through 11974...117		7 MR. CHU: Alvin Chu, on behalf of United
8 Exhibit 66 a document Bates Numbered		8 States.
9 CMS-ADS-23248 through 23337...136		9 MR. WHITLEY: Kenneth Whitley, Office of
10 Exhibit 67 a document Bates Numbered		10 General Counsel, Department of Health and Human
11 CMS-ADS-59892 through 59893...151		11 Services.
12 Exhibit 68 a document Bates Numbered		12 MS. GOODMAN: And could the folks
13 CMS-ADS-593107 through 593110..167		13 attending remotely please state your presence?
14 Exhibit 69 a document Bates Numbered		14 MR. SOSNOWSKY: Mark Sosnowsky,
15 CMS-ADS-183807 through 183811..181		15 Department of Justice, and I will be in and out
16 Exhibit 70 a document Bates Numbered		16 of this deposition remotely. So if you lose me,
17 CMS-ADS-529199 through 529200..190		17 please don't -- you can continue.
18 Exhibit 71 a document Bates Numbered		18 THE VIDEOGRAPHER: Thank you.
19 CMS-ADS-189390.....251		19 Would the court reporter please swear in
20 Exhibit 72 a document Bates Numbered		20 the witness?
21 CMS-ADS-64968 through 64971....258		21 * * *
22 Exhibit 73 a document Bates Numbered		22 Whereupon --
23 CMS-ADS-440295.....265		23 CHRISTOPHER KOEKPKE,
24 Exhibit 74 a document Bates Numbered		24 called to testify, having been first duly sworn
25 CMS-ADS-531032 through 531072..268		25 or affirmed, was examined and testified as

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1 term, do you view that -- the different products 2 and services for reaching your intended audience 3 to be reasonably interchangeable?	1 it felt longer than this, I know it's only been 2 an hour -- the optimizations. The mere fact that 3 we make optimizations means that, on any given 4 moment on any given campaign, some of these 5 vendors, tactics, channels, are reaching and 6 giving us a better return on investment. So 7 that -- that alone right there.
4 MS. CLEMONS: Objection; form. Calls 5 for a legal conclusion.	8 If you took a step higher, you would say 9 most logged-in experiences; say, Facebook, have a 10 limited audience. Part of that audience might be 11 engaged. It might be worthwhile for us to -- to 12 -- to buy some ads there. And if we look at our 13 performance reports, over the years, and still 14 holds up, Facebook tends to give us emails. With 15 things like Google Display, it has a much broader 16 audience. It's more likely to help us find 17 people who are -- who need healthcare -- who need 18 access to healthcare, because it's a very diverse 19 group of people. And Google -- Google Display 20 can deliver ads to a more diverse group because 21 it goes everywhere.
6 THE WITNESS: No. 7 BY MS. GOODMAN: 8 Q. Why not? 9 A. Well, number one, they reach different 10 audiences. 11 I'll also say, I should have predicated 12 my response on, are we talking about a particular 13 campaign, because it does change from campaign to 14 campaign.	22 And so as such, they're just not the 23 same. Plus the way the different places like 24 Instagram and Facebook, they have rules about 25 what their ads look like, as do displays, and
15 Q. Okay. Let's -- let's pick Open 16 Enrollment general market. In the circumstance 17 where you optimize your advertising spend during 18 that campaign intending to reach the general 19 market audience, do you view the different 20 vendors or providers of advertising that you are 21 optimizing among is reasonably interchangeable?	22
22 MS. CLEMONS: Objection; form. Calls 23 for a legal conclusion.	23
24 THE WITNESS: I just have to ask you, 25 what Open Enrollment are you talking about? I'm	24
25	25
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1 sorry. I just have so many different projects. 2 BY MS. GOODMAN: 3 Q. Yeah. Sure. It doesn't really matter 4 for purposes of my question. Any Open Enrollment 5 period -- well, strike that. Let's go back to an 6 example. 7 A. You know what, my ask was, just to you 8 up a little bit -- 9 Q. Okay. 10 A. -- Medicare or Healthcare.gov. 11 Q. I see, I meant Healthcare.gov. 12 A. Okay. 13 Q. So if you're making optimizations for 14 Open Enrollment Healthcare.gov across vendors or 15 providers of advertising services, do you view 16 those vendors or -- as reasonably interchangeable 17 with one another?	1 those ads don't actually look the same. The 2 messaging you put in there can be different and 3 is different. So what you can explain to your 4 audience is different in those different 5 platforms, as well. So, no, they are not 6 interchangeable. That's just two examples. 7 Q. Okay. And each channel can perform 8 differently based on your intended audience or 9 goals, correct, for any given campaign?
18 MS. CLEMONS: Objection to form. Calls 19 for a legal conclusion.	10 MS. CLEMONS: Objection to form. 11 THE WITNESS: Each -- as -- I'm sorry. 12 It was a long question. Each --
20 THE WITNESS: No. 21 BY MS. GOODMAN: 22 Q. Okay. Why not?	13 BY MS. GOODMAN: 14 Q. Let me rephrase. 15 A. Okay. I'm so sorry. 16 Q. It's okay. No -- 17 A. The first half is what I forgot, yes. 18 Q. That's okay.
23 A. Well, I have many places to start on 24 this answer, but just what we've been talking 25 about for the last few hours, or however long --	19 No one channel always performs the same 20 for every campaign, correct? 21 MS. CLEMONS: Objection to form. 22 THE WITNESS: I would agree with that. 23 BY MS. GOODMAN: 24 Q. Okay. And so what channels you choose 25 depends on your campaign goals, correct?

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1	A. Among other things, yes.	1 This begins Unit Number 5. We're on the record.
2	Q. Okay. And how each channel is	2 BY MS. GOODMAN:
3	performing during the life of a campaign varies	3 Q. Mr. Koepke, in the course of your work
4	across campaigns, correct?	4 at CMS in the Strategic Marketing Group, have you
5	MS. CLEMONS: Objection to form.	5 become familiar with a term Open Web Display
6	THE WITNESS: What was the first part	6 Advertising?
7	that varies across campaigns?	7 A. That is not a word that we generally
8	BY MS. GOODMAN:	8 use. So in the course of the work, no, I have
9	Q. How each channel is performing during	9 not become familiar.
10	the life of a campaign varies between campaigns,	10 Q. Okay. How about in any conversations
11	correct?	11 with your advertising agencies, have you heard
12	MS. CLEMONS: Objection to form.	12 them use the term Open Web Display Advertising?
13	THE WITNESS: I -- that's kind of a	13 A. Not that I recall.
14	vague question, but I -- I think, yes, is --	14 Q. Okay. Do you recall ever reading any
15	BY MS. GOODMAN:	15 documents in the course of your work at CMS using
16	Q. In other words, you can't expect a	16 the term Open Web Display Advertising?
17	channel to perform exactly the same way in every	17 MS. CLEMONS: Objection to
18	campaign that the Strategic Marketing Group runs,	18 the extent that it calls for privileged
19	correct?	19 communications with counsel. If you can
20	MS. CLEMONS: Objection to form.	20 answer without being informed by privileged
21	THE WITNESS: I think looking at the	21 communications with counsel, you can answer.
22	word "exactly," I focus on that and agree. But	22 BY MS. GOODMAN:
23	there are certain ways that they perform that we	23 Q. Are you able to answer now?
24	do expect; --	24 A. I cannot.
25	BY MS. GOODMAN:	25 Q. Okay. And so to be clear, my question
	Page 207	Page 209
1	Q. Okay.	1 was, in the course of your work, your day-to-day
2	A. -- we do track that and see if our	2 job at CMS in the Strategic Marketing Group, have
3	expectations are met.	3 you read any documents using the term Open Web
4	Q. And how do you track that to see if your	4 Display Advertising?
5	expectations are met?	5 A. Not to my recollection.
6	A. Well, some of the emails here that we've	6 Q. Okay. Based on your experience
7	-- we've gone over today give examples of, mostly	7 directing advertising campaigns for CMS, do you
8	in this case, last-click attribution. We also	8 have an understanding of what the term Open Web
9	talked about the cross-channel report. So in	9 Display Advertising means?
10	real life we can -- we can see certain things	10 MS. CLEMONS: Objection; foundation.
11	that allow to us make optimizations.	11 THE WITNESS: Based on my advertising
12	Q. Okay.	12 work, my understanding of that term would be
13	MS. CLEMONS: We've been going for about	13 conjecture.
14	90 minutes.	14 BY MS. GOODMAN:
15	THE WITNESS: Does anybody need a break?	15 Q. Why would it be conjecture -- gen -- why
16	How much time do we have left before we hit seven	16 would your understanding of the term Open Web
17	hours?	17 Display Advertising, based on the -- your
18	MS. GOODMAN: Well, why don't we just	18 advertising work, be conjecture?
19	take a break for a moment.	19 A. Because we haven't used that term based
20	THE WITNESS: Okay. I'm happy to give	20 on my advertising work. But I understand English
21	you a break.	21 pretty well, so I would parse the words. But
22	THE VIDEOGRAPHER: The time is 3:47 p.m.	22 that parsing would be mine and not who wrote it.
23	This ends Unit 4. Off the record.	23 Q. Based on your advertising work, is the
24	(Recess taken.)	24 term Open Web Display Advertising one commonly
25	THE VIDEOGRAPHER: The time is 4:06 p.m.	25 used in the advertising industry?

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1 MS. CLEMONS: Objection; foundation.	1 BY MS. GOODMAN:
2 THE WITNESS: I can't speak to common	2 Q. And what -- what conduct by Google are
3 use in the advertising industry. But I can speak	3 you -- were you -- have you become aware of that
4 to our work, and we do not commonly use it.	4 has negatively impacted CMS's advertising?
5 BY MS. GOODMAN:	5 MS. CLEMONS: Objection to the extent
6 Q. So sitting here today -- well, other	6 that question calls for the substance of
7 than my asking you, sitting here today, about the	7 privileged communications with counsel. If your
8 term Open Web Display Advertising, have you ever	8 question -- if you can answer the question
9 heard it before?	9 without being informed by privileged
10 MS. CLEMONS: Objection. To the extent	10 communications, you may do so.
11 that you can answer without revealing privileged	11 THE WITNESS: This year there was a
12 communications, you may do so.	12 report on Google Video Network suggesting that
13 BY MS. GOODMAN:	13 Google was placing videos on not prime properties
14 Q. Are you able to answer that question,	14 or publishers when advertisers have been
15 sir?	15 expecting other types of placements. And to the
16 A. No.	16 degree that that report is true -- that's still
17 Q. Okay. And is that because the only	17 being debated by many people, including our group
18 place you've otherwise heard the term Open Web	18 -- then there could be some negative impact.
19 Display Advertising is in privileged	19 BY MS. GOODMAN:
20 communications with counsel?	20 Q. So do you know, one way or another, that
21 MS. CLEMONS: Objection. I'm going to	21 -- whether this report to which you're referring
22 instruct the witness not to answer that question	22 is true?
23 which calls for privileged communications with	23 MS. CLEMONS: Objection to form.
24 counsel and their substance.	24 THE WITNESS: No, I don't.
25 BY MS. GOODMAN:	25 BY MS. GOODMAN:
Page 211	Page 213
1 Q. Are you going to answer that question	1 Q. And do you know where this report was
2 -- follow that instruction?	2 published? What outlet?
3 A. Yes, I am.	3 A. I do, but it's, like, lost in the
4 Q. Okay. So sitting here today, do you	4 recesses of my brain. I could pull it up in my
5 have any understanding of what the term Open Web	5 emails.
6 Display Advertising means?	6 Q. Was it ProPublica?
7 A. Only the conjecture we discussed	7 A. Yes.
8 earlier.	8 Q. Okay.
9 Q. Okay. No other understanding, correct.	9 A. Thank you.
10 MS. CLEMONS: Objection to the extent	10 Q. You're welcome.
11 that question calls for the -- for -- for	11 What steps, if any, have you taken to
12 privileged communications with counsel.	12 figure out if the reporting in this ProPublica
13 You can answer if your answer would not	13 article is true?
14 be informed by privileged communications.	14 A. First, we looked into whether or not we
15 BY MS. GOODMAN:	15 placed ads in the -- the type of service that
16 Q. May -- are you able to answer that	16 ProPublica was talking about. And I do have to
17 question?	17 correct one of my answers, because one thing we
18 A. No.	18 discovered was that when we explicitly said not
19 Q. Okay. In the course of your work as	19 to use that network, Google used it anyway. And
20 strategic marketing director at CMS, have you	20 so there are some negotiations going on about
21 ever become aware of any conduct by Google that	21 that right now. And so there's that. But then
22 negatively impacted CMS's advertising?	22 when we placed it in that network on purpose, we
23 MS. CLEMONS: Objection to form.	23 are still trying to assess, and we, indeed, have
24 THE WITNESS: In all my work as a	24 met with Google salespeople who, of course, have
25 director of Strategic Marketing Group, yes.	25 argued that the ProPublica report is not correct.

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1 So we are trying to figure that out.	1 name Sean Harrison?
2 Q. When you say, "when we explicitly said	2 A. Yes.
3 not to use that network," what -- what networks	3 Q. Is he somebody that you've met with from
4 are you referring to?	4 Google?
5 A. I'm going to get the names wrong, so	5 A. Yes.
6 please forgive me. But there are different	6 Q. Was he at this ProPublica meeting, we'll
7 products, if you will, that Google offers for	7 call it?
8 placing video ads, and I just can't think of the	8 A. I'm not sure. There's about four people
9 names of them right now. It's late afternoon.	9 from Google, and I'm just -- sorry.
10 The -- and not even caffeine will bring that back	10 Q. Okay. Have you ever met Sean Harrison?
11 alive right now. But when looking at our ad buys	11 A. Unless I'm getting my Seans mixed up,
12 and the different possibilities, we instructed	12 which is a hundred percent possible, I would say
13 Weber and Weber instructed Google to not use the	13 yes.
14 one that ProPublica's talking about. Because	14 Q. Okay. Under what circumstances did you
15 it's not all YouTube ads and all YouTube	15 meet with Sean Harrison from Google?
16 placements that are a problem. It's this one	16 A. If I'm talking about the right Sean, so
17 product line.	17 I say -- I realize that I could be mis -- so when
18 And -- and we have discovered that they	18 Michelle sets up the meetings, she invites Shawn
19 actually did place some ads there.	19 at times.
20 Q. Okay. What -- what discussions have you	20 Q. Can you -- sitting here today, do you
21 had with Google salespeople about this issue?	21 recall any specific -- any particular meeting
22 MS. CLEMONS: Objection to form.	22 that you and Sean Harrison were at together?
23 THE WITNESS: We've had -- I'll say I	23 A. I -- I wish I could pull it up on my
24 have had one meeting with them. It was their	24 -- on my email so I'd make sure I'm -- we're
25 desire to explain to us their take on the story.	25 talking about the same Sean. But, if we are, he
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1 BY MS. GOODMAN:	1 is a person who has access to and does analytics
2 Q. Who from Google did you meet with?	2 of Google data that Google does not give us
3 A. I do not know all the names of people.	3 access to do analytics for. And he would have
4 I know the person who set it up.	4 done some analytics at our request.
5 Q. Who is that?	5 Q. Okay. Do you know an individual by the
6 A. Her last name -- boy, I'm trying to	6 name of Kunal Khanna from Google?
7 think of her first name now. She is our main	7 A. I do.
8 sales contact. H-i-n-k-e [sic] would be her last	8 Q. And is that a person that you have had
9 name.	9 occasion to communicate with relating to CMS's
10 Q. Okay.	10 advertising work with Google?
11 A. Oh my goodness. Michelle.	11 A. Yes.
12 Q. And did that take place -- did that	12 Q. Do you have -- remember any meetings
13 meeting that you're recalling take place in	13 with Mr. Khanna?
14 January of 2023, to the best of your	14 A. Yes.
15 recollection?	15 Q. What meetings do you remember?
16 A. No, it did not take place in January of	16 A. So he's been moved to another account,
17 2023.	17 and I don't remember exactly when that happened.
18 Q. When did it take place, to the best of	18 Michelle was his placement [sic]. But they were
19 your recollection?	19 of the same type. They -- Google definitely
20 A. Sometime in the last three months.	20 reaches out to us as a -- as a client, which I
21 Q. Okay.	21 imagine they would think we're an important
22 A. After the ProPublica report was	22 client. And those meetings would be -- they
23 published. So that will at least give you that	23 provide analytics that they did on their own on
24 end of the date.	24 our campaigns, usually to suggest that running
25 Q. Okay. Do you know an individual by the	25 more ads on Google networks were a -- was a good

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1 deposition is over and that Google does not have 2 grounds to hold the deposition open. 3 MS. GOODMAN: Okay. Thank you for your 4 time, Mr. Koepke. 5 THE WITNESS: It was my pleasure. This 6 was fun. 7 THE VIDEOGRAPHER: Time is 6:23 p.m. 8 We're off the record. 9 (Deposition concluded -- 6:23 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 290 Page 292 1 Katherine Clemons Esq 2 Katherine.clemons@usdoj.gov 3 August 22nd, 2023 4 RE: United States, Et Al v. Google, LLC 5 8/21/2023, Christopher Koepke (#6043164) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 (erratas-cs@veritext.com). 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25
1 C E R T I F I C A T E 2 3 I do hereby certify that I am a Notary 4 Public in good standing, that the aforesaid 5 testimony was taken before me, pursuant to 6 notice, at the time and place indicated; that 7 said deponent was by me duly sworn to tell the 8 truth, the whole truth, and nothing but the 9 truth; that the testimony of said deponent was 10 correctly recorded in machine shorthand by me and 11 thereafter transcribed under my supervision with 12 computer-aided transcription; that the deposition 13 is a true and correct record of the testimony 14 given by the witness; and that I am neither of 15 counsel nor kin to any party in said action, nor interested in the outcome thereof. 16 17 18 WITNESS my hand and official seal this 19 22nd day o 20 21 22 23 24 25	Page 291 Page 293 1 United States, Et Al v. Google, LLC 2 Christopher Koepke (#6043164) 3 E R R A T A S H E E T 4 PAGE ____ LINE ____ CHANGE _____ 5 _____ 6 REASON _____ 7 PAGE ____ LINE ____ CHANGE _____ 8 _____ 9 REASON _____ 10 PAGE ____ LINE ____ CHANGE _____ 11 _____ 12 REASON _____ 13 PAGE ____ LINE ____ CHANGE _____ 14 _____ 15 REASON _____ 16 PAGE ____ LINE ____ CHANGE _____ 17 _____ 18 REASON _____ 19 PAGE ____ LINE ____ CHANGE _____ 20 _____ 21 REASON _____ 22 _____ 23 _____ 24 Christopher Koepke Date 25

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